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09/367,569	12/21/1999	WOLFGANG WEIDNER	IPQ-004US	4514
959 7590 05/26/2011 NELSON MULLINS RILEY & SCARBOROUGH LLP FLOOR 30, SUITE 3000 ONE POST OFFICE SQUARE BOSTON, MA 02109				
EXAMINER TORRES, MARCOS L				
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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* WOLFGANG WEIDNER and HANS MURCAS

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Appeal 2009-011138  
Application 09/367,569  
Technology Center 2600

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Before JOSEPH F. RUGGIERO, MAHSHID D. SAADAT,  
and ELENI MANTIS MERCADER, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Final Rejection of claims 22 and 23. No other claims are pending. (App Br. 3.) We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

#### STATEMENT OF THE CASE

Appellants' invention relates to displaying functions of a radio apparatus in the vicinity of a display device such that a local association exists between at least one control element and the displayed function (Spec. 1).

##### *Exemplary Claim*

Claim 23 is illustrative of the invention and reads as follows:

23. A radio apparatus embodied-in a radio-telephone, comprising a display device; a first control element and a second control element each for selecting and/or activating functions of the radio apparatus which are displayed on said display device; said first and second control elements being disposed neighboring said display device so that a local association exists between said first and second control elements and displaying of functions of the radio apparatus on said display device, wherein a first operating state is provided in which an information about said first operating state on said display device is associated with said first control element, said first control element having no function and merely the information about said first operating state is assigned and in which a function for activation of a second operating state on said display device is associated with said second control element, wherein said second operating state is associated with said first operating state, and wherein in said second operating state an information about said second operating state on said display device is associated with said second control element, said second control element having no function and merely the information about said second operating state is assigned and in which a function for activation of said first operating state on said display device is associated with said first control element.

*The Examiner's Rejection*

The Examiner relies on the following prior art in rejecting the claims:

Baals	US 5,396,547	Mar. 7, 1995
Tsoi	US 5,633,912	May 27, 1997

Claims 22 and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tsoi and Baals.<sup>1</sup>

ISSUE

Did the Examiner err in rejecting the claims under 35 U.S.C. § 103(a)? The issue specifically turns on whether the combination of references teaches or suggests two control elements that toggle between first and second operating states, as recited in claim 23.

ANALYSIS

Appellants argue that the soft keys in Tsoi are all associated with a control function displayed on the display and the display is blank when the soft keys have no associated functions (App. Br. 6). Additionally, Appellants point out that, the transitions between various states in Tsoi indicate that in the only two reversible transitions to a previous state, as shown in Figures 5, 7, and 10, the screen associated with a soft key with no function is blank (App. Br. 7). Appellants further argue that Baals merely provides an arrangement for entering information into a directory (App. Br. 8). In response, the Examiner asserts that Tsoi discloses that, as shown in

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<sup>1</sup> Appellants indicate that claim 22 depends on claim 23 (App. Br. 11), whereas claim 22 is reproduced in the “CLAIMS APPENDIX” section as improperly dependent upon itself.

Figures 7 and 8, pressing the call button causes transition to a different state in which no function is displayed associated with the other three buttons (Ans. 5).

We agree with Appellants (Reply Br. 2) that the relied-on portion of Tsoi provides no teaching or suggestion related to “an arrangement in which pressing a button causes a transition to a different operating state in which that button has no function” (emphasis original). In fact, while a function for transitioning to another state is associated with buttons 82 and 84 in Tsoi, no further operating states is identified in which those buttons have no function. *See* Tsoi, Figs. 7 and 8.

#### CONCLUSION

On the record before us, we find that the Examiner erred in rejecting claim 23. Therefore, the 35 U.S.C. § 103 rejection of claim 23, and of claim 22 dependent therefrom, cannot be sustained.

#### DECISION

The decision of the Examiner rejecting claims 22 and 23 is reversed.

#### REVERSED